

**CERTIFICATE OF MAILING BY FIRST CLASS MAIL (37 CFR 1.8)**

Applicant(s): Charles Boucher

Docket No.

DVME-1014USCON1

Application No.

10/058,622

Filing Date

01/28/2002

Examiner

Shubo Zhou

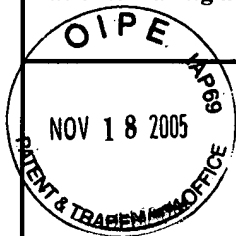
Customer No.

21302

Group Art Unit

1631

Invention: **Method for Effecting Computer Implemented Decision-Support in the Selection of the Drug Therapy of Patients Having a Viral Disease**



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Attorney Docket No. DVME-1014USCON1

5 BOUCHER, CHARLES

Serial No. 10/058,622

Group Art Unit: 1631

Filed: January 28, 2002

Examiner: SHUBO ZHOU

For: METHOD FOR EFFECTING COMPUTER IMPLEMENTED DECISION-SUPPORT IN  
THE SELECTION OF THE DRUG THERAPY OF PATIENTS HAVING A VIRAL DISEASE

**COMMENTS REGARDING PATENT TERM ADJUSTMENT, REASONS FOR  
ALLOWANCE AND EXAMINER INTERVIEW SUMMARY RECORD**

Mail Stop Issue Fee  
Assistant Commissioner for Patents  
P.O. Box 1450  
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Sir:

These comments on the patent term adjustment determination, the Statement of Reasons for  
Allowance and the Examiner Interview Summary Record accompany the payment of the issue and  
publication fees for the above-identified application.

**Remarks** begin on page 2 of this paper.

**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8**

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NATALIE SORRENTINO  
Name of person signing document

Natalie Sorrentino  
Signature of person signing document

**REMARKS**

The applicant offers comments on the patent term adjustment determination, the Statement of Reasons for Allowance and the Examiner Interview Summary Record below.

5

**1. The Patent Term Adjustment Determination**

The applicant's representative has reviewed the Patent Term Adjustment Determination mailed on August 29, 2005, in the above-identified application and believes that there may be an error in the determination.

10 Specifically, the USPTO has credited the applicant with 179 days of patent term adjustment for issuing the Notice of Allowance 4 months and 179 days after the amendment after the Final Rejection filed on November 3, 2004. However, it appears that the November 3, 2004, amendment does not qualify as a response to a Final Rejection under the Patent Term Adjustment rules since it did not place the application in condition for allowance, as indicated by the Examiner in the  
15 February 22, 2005, Advisory Action. Therefore, it appears that the calculation should have counted the amendment after the Final Rejection filed on June 15, 2005, as the response to the Final Rejection of September 7, 2004, since the June 15, 2005, amendment placed the application in condition for allowance.

**20 2. The Examiner's Statement of Reasons for Allowance**

The Examiner's Statement of Reasons for Allowance includes the following remarks:

25 The first value for resistance level is construed as what is defined in the specification on page 5: 'The resistance level is represented on a scale from 0 (low resistance) to 3 (high resistance).' The second value for confidence level is construed as what is defined in the specification on page 6: 'A confidence value has one of the three following levels: (1) [sic - (1)] suggestive evidence, (2) proven in vitro, (3) proven in vivo.'

30 The United States Patent and Trademark Office ("USPTO") is required to give the claims their broadest reasonable interpretation during examination. Thus, the above-quoted portion of the Statement of Reasons for Allowance is incorrect since it incorrectly reads limitations from the specification into the claims, which limitations are not, in fact, present in the claims. Specifically, the claims do not require that the resistance level be represented on a scale from 0 (low resistance)

to 3 (high resistance). In addition, the claims do not require that the confidence value has one of the three following levels: (1) suggestive evidence, (2) proven in vitro, (3) proven in vivo. As a result, the USPTO has given the claims an unjustifiably narrow interpretation in the Statement of Reasons for Allowance, which is not the broadest reasonable interpretation and is not the correct interpretation of these claims.

The following reason for allowance is correct, to the extent quoted below, as applied to the claims as properly interpreted,

“The prior art does not teach or suggest a method as claimed comprising using a rules database wherein the suitability is based on both the resistance level and the confidence level...”

The final reason for allowance, namely,

“The prior art does not teach or suggest a method as claimed...wherein the resistance level is represented on a scale from 0 to 3.”

may be a correct statement of what is in the prior art, but is also an incorrect reason for allowance since no pending claim requires that the resistance level be represented on a scale of 0 to 3.

### 3. Comments on the Examiner Interview Summary Record

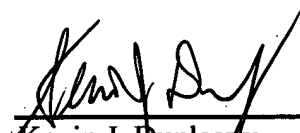
The Examiner's Interview Summary Record for the telephone interview of 14 June 2005, states that,

“...and it is agreed, as indicated in the Advisory action mailed 5/12/04, that the claimed method and computer program carrier are only enabled for effecting computer implemented decision-support in selection of a drug therapy of patients having HIV, not all viral diseases.”

In order to correct the written record, the applicant hereby notes that the applicant did not agree at any time that the claimed method and computer program carrier are only enabled for effecting computer implemented drug therapy for patients having HIV. Rather, the applicant agreed to limit the claims to computer implemented drug therapy for patients having HIV in order to expedite prosecution of the above-identified by obviating the outstanding enablement rejection,

despite the fact that, in the applicant's view, the claimed method and computer program carrier are enabled for computer implemented drug therapy for patients having any viral disease.

Respectfully Submitted,

  
\_\_\_\_\_  
Kevin J. Dunleavy  
Reg. No. 32,024

Date: November 14, 2005

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